

J457CARS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 680 (CM)

5 CRAIG CARTON,

6 Defendant.

7 -----x

8 New York, N.Y.
9 April 5, 2019
10 11:30 a.m.

11 Before:

12 HON. COLLEEN MCMAHON,

13 Chief District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

16 ELISHA KOBRE

17 BRENDAN QUIGLEY

Assistant United States Attorneys

18 GOTTLIEB & JANEY LLP

Attorneys for Defendant

19 BY: DERRELLE M. JANEY

20 ADAM FEDERER

21 ALSO PRESENT: Michael Zavona, Special Agent FBI
22 Sean Sweeney, Special Agent FBI
Jonathan Bressor, U.S. Probation

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(Case called)

(In open court)

MR. QUIGLEY: Good morning, your Honor, Brendan Quigley and Elisha Kobre for the United States, joined by special agents Sean Sweeney and Mike Savona from the F.B.I., along with probation officer Jonathan Bressor.

THE COURT: Good morning to the government.

MR. JANEY: For the defendant, Gottlieb & Janey by Derrelle Janey. Good morning, your Honor.

THE COURT: Good morning, Mr. Janey.

MR. JANEY: And I am joined at counsel table by Mr. Carton and my colleague Adam Federer.

THE COURT: Mr. Federer.

Good morning, Mr. Carton.

THE COURT: All right, have a seat.

This matter is on for sentencing, 17 Crim. 680, United States of America v. Craig Carton, Mr. Carton, having been found guilty after a trial before a jury of 12 of one count of conspiracy to commit wire fraud and securities fraud, a class D felony, in violation of 18 United States Code, Section 371. This crime carries a statutory maximum penalty of five years' imprisonment; three years' supervised release; a maximum fine of \$250,000, or twice the gross pecuniary gain to the defendant or loss to identifiable victims other than the defendant; and a \$100 special assessment. Also one count of wire fraud, a Class

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1 C felony, in violation of 18 United States Code, Section 1343.
2 This crime carries a statutory maximum term of 20 years'
3 imprisonment; three years' supervised release; a maximum fine
4 of \$250,000, or twice the gross pecuniary gain or loss as
5 aforesaid; and a \$100 special assessment. In addition, one
6 count of securities fraud, a Class C felony, in violation of 18
7 United States Code, Section 78j(b) and 15 United States Code
8 Section 78f(f), 17 Code of Federal Regulations 240.10b-5. This
9 crime carries a statutory maximum term of 20 years'
10 imprisonment; three years' supervised release; a maximum fine
11 of \$5 million, or twice the gross gain or loss as aforesaid;
12 and a \$100 special assessment.

13 In connection with today's sentencing, I have received
14 and reviewed a great deal of paper. I have the presentence
15 report prepared by United States Probation Officer Jonathan
16 Bressor. It was originally filed with the court on the 19th of
17 March of this year.

18 I have a sentencing memorandum from the government
19 which was filed with the court on the 29th of March of this
20 year.

21 I have a draft order of restitution and a proposed
22 preliminary order of forfeiture and money judgment which were
23 provided by the defendant.

24 I have received and reviewed a very extensive
25 submission on behalf of Mr. Carton that was filed by Mr.

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1 Gottlieb and Mr. Janey. There is a sentencing memorandum.
2 Attached to that sentencing memorandum directly are Exhibits A
3 through H, which include some medical reports and information
4 about Mr. Carton and his by now widely publicized gambling
5 addiction.

6 I have received from Gottlieb and Janey I think it was
7 up to 90 letters from you in these two file folders in support
8 of Mr. Carton, and of course I have some exhibits filed under
9 seal and some that are partly redacted.

10 I have been given by Mr. Janey the transcript of the
11 hearing before Judge Rakoff in the Caspersen matter. We have
12 also, as is customary in these cases that are more in the
13 public eye, received some letters that just came to us
14 directly, and Mr. O'Neil has, I believe, given all of these
15 letters to you: One dated March 31, 2019 from someone named
16 Mary Walter; one dated March 24, 2019 from a Mr. Thomas
17 Kiernan; one dated March 27, 2019 from a Mr. John Corona; one
18 received on February 15 on the stationery of the Dukal
19 Corporation from Mr. Gerry LoDuca; one from a Lindsay Held; one
20 from the Davidoff law firm from Jonathan Davidoff. I think
21 that's all the loose letters that we have. Mr. Quigley, you're
22 reaching for your microphone.

23 MR. QUIGLEY: Nothing further from the government in
24 terms of submissions.

25 THE COURT: You anticipated my question. Is there

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1 anything I should have seen in writing prior to today's
2 proceeding.

3 MR. QUIGLEY: No. Just one clarification. I think
4 you said the proposed forfeiture and restitution orders were
5 provided by defense. We actually provided them.

6 THE COURT: I meant to say the government.

7 MR. QUIGLEY: That's it.

8 THE COURT: Thank you. Mr. Janey, is there anything
9 that I should have seen from the defendant in writing prior to
10 today's proceeding that I have not listed?

11 MR. JANEY: No, your Honor. I would just briefly
12 mention -- I believe this is captured in your comments -- but
13 we also provided a CD video attached to our papers.

14 THE COURT: Yes, it's attached to the papers. OK.

15 All right. Has the government reviewed the
16 presentence report?

17 MR. QUIGLEY: We have, your Honor.

18 THE COURT: Any additions, deletions, corrections?

19 MR. QUIGLEY: Only one minor point, your Honor. It
20 says I think in there that forfeiture is not applicable. I
21 think for the reasons in our sentencing memo it's plainly
22 applicable here. That's the only thing we have an issue with.
23 My understanding is that was an oversight.

24 THE COURT: I think it was an oversight on the part of
25 probation. It's not about the wisdom of forfeiture; it's about

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1 whether it's applicable. And I will change that on the
2 sentencing recommendation.

3 MR. QUIGLEY: Thank you, your Honor.

4 THE COURT: Does the government wish to be heard on
5 sentencing?

6 MR. QUIGLEY: Just briefly, your Honor. Your Honor
7 sat through the trial; you are obviously very familiar with the
8 record. But this was an extended and serious fraud; it went on
9 for at least a year from August of 2016 all the way up to right
10 before the defendant's arrest. He kept lying to people for
11 that whole time, and those are people who formed relationships
12 with him. He was involved in both sides of the fraud, both the
13 inducement of investors and then the misappropriation of
14 investor funds, and he directly benefited.

15 I expect you will hear when the defense gets up about
16 how the defendant has made two small payments in recent days to
17 two of the individual investors, I think about \$25,000 each.
18 It's a small portion of the restitution due and owing to them.

19 THE COURT: It's going to take him a while, Mr.
20 Quigley.

21 MR. QUIGLEY: Understood, your Honor. And there is
22 also an article in the New York Post this morning about a
23 forthcoming video.

24 THE COURT: Thank you, Mr. Mushnick.

25 MR. QUIGLEY: I certainly hope the defendant is

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1 remorseful and committed to making things right as indicated by
2 the restitution payments in that article, but in determining
3 what weight to give the events in recent days in imposing
4 sentence today I think it's important to look at the whole
5 picture and timeline here.

6 It's been two and a half years since the defendant was
7 first interviewed by the government about this conduct -- two
8 years since he was first interviewed by the government, 19
9 months since he was arrested, and five months since he was
10 convicted, and, you know, these payments and actions on the eve
11 of sentencing I think should be given the appropriate weight in
12 light of that whole record.

13 So, for all of these reasons, and what is set forth in
14 our sentencing memo, we think a guideline sentence is
15 appropriate here.

16 THE COURT: Thank you, Mr. Quigley.

17 Mr. Janey, have you reviewed the presentence report?

18 MR. JANEY: I have, your Honor.

19 THE COURT: And have you gone over it with Mr. Carton?

20 MR. JANEY: I have, your Honor.

21 THE COURT: Any additions, deletions or corrections?
22 I thought maybe you took issue with the loss amount.

23 MR. JANEY: I know that the government indicated in
24 their submission that we take issue with the loss amount.
25 That's not the case, your Honor. But as we've shared with the

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1 government in the days preceding, and with probation, we just
2 have in the way of modifications two proposed modifications to
3 the presentencing report, your Honor.

4 THE COURT: Yes, sir.

5 MR. JANEY: With respect to paragraph 166, we would
6 just --

7 THE COURT: Let me get there.

8 MR. JANEY: I'm sorry, your Honor.

9 THE COURT: Yes, OK.

10 MR. JANEY: There, your Honor, it strikes us that it's
11 appropriate to include in the PSR that Mr. Carton has made
12 \$50,000 toward restitution last week. That's one, your Honor.

13 THE COURT: Wait a minute. I have paragraph 166 is
14 about his 2016 and '17 tax returns. Am I working off the wrong
15 PSR?

16 MR. QUIGLEY: It's the same paragraph in ours, your
17 Honor.

18 MR. JANEY: It's further down. Further down in that
19 paragraph, your Honor, I believe it's the last two sentences.

20 THE COURT: Oh, that the breakdown of each payment is
21 unknown at this time. What you would like to add is that in
22 recent weeks Mr. Carton has paid -- do you want to put those
23 amounts on the record?

24 MR. JANEY: Yes, your Honor. He has paid \$25,000 to
25 Mr. LoDuca and \$25,000 to Mr. DelGaudio.

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1 THE COURT: OK. I've added that to the end of
2 paragraph 166.

3 MR. QUIGLEY: We have no objection to that.

4 THE COURT: Thank you. Then I won't have to cross it
5 out.

6 MR. JANEY: The second, your Honor, is just by way
7 again of proposed modification in paragraph 168.

8 THE COURT: Yes.

9 MR. JANEY: In its current form, your Honor, probation
10 notes that the New Jersey property is currently subject to a
11 contract for short sale. As we've shared with probation and
12 with the government, the bank is reviewing that, and the
13 anticipated short sale is imminent on or about the 18th of this
14 month, your Honor.

15 THE COURT: OK, so anticipated closing on or about
16 April 18.

17 MR. JANEY: And we just note that in particular, your
18 Honor, because it goes to the chart at paragraph 165, which is
19 a description of Mr. Carton's assets. There it lists the fair
20 market value of the New Jersey property, and again by way of
21 clarification that's not going to be imminently an asset of
22 Mr. Carton.

23 THE COURT: Understood. OK.

24 All right. Mr. Janey, the floor is yours, sir.

25 MR. JANEY: Thank you. If I may take the lectern,

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1 your Honor.

2 THE COURT: Absolutely.

3 MR. JANEY: May it please the Court, Chief Judge
4 McMahon, on sentencing. Our sentencing submission, as the
5 Court noted, is lengthy and detailed, so I'm not necessarily
6 going to repeat what we have said here, but this morning, your
7 Honor, if we might focus for the defense on two things.

8 Number one, we will focus on the first prong of the
9 statute of Section 3553(a), in particular, your Honor, the
10 nature and circumstances of the offense, and the history and
11 characteristics of the defendant Craig Carton.

12 And, your Honor, it's in that context that I would
13 like to make clear and clarify our perspective on the gambling
14 addiction and the child sexual assault and the reasons that we
15 submit that the addiction and the childhood trauma, that it led
16 to the addiction, which in turn we submit is a major
17 contributing force to the offense conduct here, is a meaningful
18 mitigating factor in this case.

19 The second piece that we will focus on, your Honor, is
20 that we will give some time to the sixth prong of the statute,
21 the need to avoid unwarranted sentence disparities among
22 defendants with similar records who have been found guilty of
23 similar conduct.

24 Now, first, Chief Judge McMahon, if I may, I have
25 personally always found sentencings to be very difficult,

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1 whether I am sitting in the gallery, and especially, your
2 Honor, as a defense attorney representing a person at a
3 sentencing hearing. They are very sober, from my perspective,
4 your Honor, for me. For me personally as a God fearing person
5 it is a reminder -- sentencing is a reminder that there is an
6 ultimate day of reckoning. And as a defense attorney,
7 sentencings are strong reminders that the criminal law demands
8 we be accountable to our fellow citizens every day.

9 As we described in our sentencing submission, and as
10 your Honor read in the actual words of Craig Carton attached to
11 the submission, and as your Honor will hear from Mr. Carton
12 today, Mr. Carton is before your Honor today making no excuses
13 for his violations of the criminal law.

14 What we do here today, your Honor, is to provide
15 background and context to help explain and provide insight for
16 what might have led to these crimes and, your Honor, especially
17 in light of the substantial number of letters of support
18 describing a person with a long history of charitable works,
19 where he gave his actual time and energy, what as your Honor
20 has taught me might explain the person that comes before your
21 Honor for sentencing.

22 And I know that your Honor believes that that
23 discussion is important. I know that from some of the many,
24 many sentencings over which your Honor has provided, different
25 facts, of course, different scenarios, of course, but your

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1 Honor has held fast to key underlying principles.

2 For example, in United States v. Bindow. Again
3 different facts, but in explaining the goal of sentencing your
4 Honor pointed out that the goal of sentencing is best served by
5 sentencing the old fashioned way: What they did, how to punish
6 them, but also emphasizing who they are is important. In other
7 words, your Honor has repeatedly emphasized that sentencing is
8 about the conduct in context, the context of who the person is,
9 taking the full measure of the person.

10 So, given that, I know that when I discuss the role of
11 Craig Carton's gambling addiction and childhood trauma in
12 describing who he is as a person, and as that relates to the
13 history and characteristics of Craig Carton, I believe your
14 Honor well understands the relevance of these things in
15 understanding this defendant.

16 As your Honor knows -- and, your Honor, to be clear, I
17 describe this so that the reasons we are describing the
18 gambling addiction in the context of sentencing is clear, so
19 that the argument is clear. And I know your Honor knows, but I
20 want our argument to be clear.

21 In 2013, the fifth edition of the American Psychiatric
22 Association Diagnostic and Statistical Manual of Mental
23 Disorders, DSM-V, changed the classification of pathological
24 gambling from an impulse disorder to an addiction, and part of
25 what Dr. Potenza's report is pointing out in sum and substance

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1 is that the rationale for this change is that the growing
2 scientific literature on pathological gambling revealed common
3 elements with substance use disorders, and he points out, your
4 Honor, that many scientists and clinicians had long believed
5 that problem gamblers closely resemble alcoholics and drug
6 addicts not only from the external consequences of problem
7 finances and destruction of relationships, but increasingly,
8 your Honor, on the inside as well, emotional and mental
9 turmoil, self-destructive behavior.

10 Now, having sat through Mr. Carton's trial, I am not
11 sure anyone needed a doctor to say that Mr. Carton has a
12 gambling addiction. Nevertheless, so as to not come across as
13 speculative or unfounded, we included Dr. Potenza's evaluations
14 and report about Mr. Carton. He concludes that Mr. Carton has
15 a severe gambling addiction. The history and characteristics
16 of the defendant -- of this defendant -- of Craig Carton --
17 cannot be understood without the description of that addiction,
18 what led to it and the role that it has played.

19 During the pendency of this case, Craig Carton went
20 into rehab for his gambling addiction, as we explained in the
21 submission. Craig Carton started going to Gamblers Anonymous
22 during the pendency of this case. He went to therapy,
23 including with the help and assistance of probation during the
24 pendency of this case and again was evaluated by Dr. Potenza
25 among others.

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1 Now, having read many transcripts in which your Honor
2 has adjudicated sentencing, I know that your Honor believes
3 that there are some things lacking about the advisory
4 sentencing guidelines. For me on behalf of Mr. Carton, I
5 submit one such area is its proposed treatment of gambling
6 addiction.

7 The advisory guidelines say -- as the government
8 points out in its submission -- that addiction to gambling is
9 not a reason for a downward departure. That is the policy
10 statement in Section 5H1.4, again, as the government points
11 out. But your Honor is not bound by the policy statement in
12 determining the sentence under 3553(a), and this is important
13 for Mr. Carton's sentencing, especially since 2013, your Honor,
14 following that reclassification in DSM-V of pathological
15 gambling to an addiction.

16 As your Honor knows -- and I point it out only to make
17 our argument clear -- courts across the country have agreed
18 that gambling addiction can mitigate a defendant's culpability.
19 Courts in Wisconsin, the Eastern District of Wisconsin,
20 immediately following the change, in *United States v. DiCharia*.
21 And again I'm mentioning these instances that I know your Honor
22 knows well, but to emphasize the foundation of our argument
23 about variance given who this defendant is. And in that case,
24 your Honor, citing the changed classification, that court held
25 that given the impact of the defendant's gambling addiction in

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1 that case, a defendant who had embezzled more than a million
2 dollars from her employer, where virtually all of the proceeds
3 of the crime went to gambling, where the defendant started
4 gambling after a trauma -- in that case a cancer diagnosis --
5 where the guidelines range was 41 to 51 months, where the
6 gambling addiction was well supported by defense materials, a
7 below-range term sufficed to provide just punishment. The
8 defendant was sentenced to a term of incarceration of 15
9 months. And again, your Honor, I know every case is different,
10 but I am trying to underscore that since 2013 courts have
11 seriously considered gambling addiction in contemplating a
12 variance.

13 Mr. Carton's argument on these grounds is no
14 contrivance; it is documented. And we have offered substantial
15 record of the disease as it has affected Mr. Carton, trying to
16 make clear the role it has played in these crimes.

17 Closer to home, your Honor, we submitted in our
18 supplemental submission at least one court in the Southern
19 District of New York. In November of 2016, Judge Rakoff in
20 United States of America v. Caspersen -- where Dr. Potenza, the
21 psychiatric doctor that provided the evaluation of
22 Mr. Carton -- testified at sentencing.

23 As your Honor noted, we provided the hearing
24 transcript as a part of our submission, and, your Honor, we
25 submit there importantly the government in that case stated in

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1 sum and substance that a gambling disorder could be a
2 mitigating factor in sentencing. The court in that case took
3 the gambling addiction into account at sentencing as a
4 mitigating factor, and where the guidelines indicated 15 years,
5 where the loss amount was in excess of \$27 million, sentenced
6 the defendant to 48 months' incarceration.

7 We offer these things, your Honor, to underscore the
8 point -- contrary to how we read the government's submission in
9 this case -- that gambling addiction, especially after 2013, is
10 and should be something taken into account for sentencing
11 purposes in Mr. Carton's case.

12 What Dr. Potenza points out both in his testimony in
13 Caspersen, and in his report in the instance of Mr. Carton, is
14 that a common thread in gambling addicts are reports of trauma.
15 So, to provide an understanding of who Craig Carton is and what
16 underlies the addiction, and to help explain the criminal
17 conduct here, we have put forth the details of child sexual
18 assault and other traumas.

19 Again, this is important. It goes to the history and
20 characteristics of the defendant, and to share -- your Honor,
21 rest assured, discussion of these topics have not come easy for
22 my client. Gaining the confidence to allow me to present to
23 you things that you have seen under seal, to explain the
24 person, what has happened here and what led to these crimes was
25 no small moment. Your Honor has read them from his own words

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1 in the unpublished chapter. You have read the clinical
2 evaluation.

3 Either in your own words or in the words of
4 clinicians, however you cut it, when you discuss how your
5 Tourette Syndrome was initially misunderstood as ADD or a
6 failure to pay attention, and you become locked in a cage for
7 three days, that is bound to have a profound impact.

8 Whether it be through alcohol or extreme gambling, the
9 effort to number that pain is absolutely part of the
10 explanatory context here, and, your Honor, it is for that
11 reason that page 18 of the government's submission makes what
12 for me is an incredible statement. The government at page 18,
13 and I quote, "In any event, Carton's childhood trauma does not
14 excuse or even explain his action four decades later in
15 stealing millions of dollars, particularly since in the
16 intervening years he has been able to lead a highly productive
17 and successful life."

18 Wow. Well, first, Mr. Carton's submission could not
19 iterate more than it did that his childhood abuse is not meant
20 to excuse his criminal conduct. It could not have been
21 clearer.

22 Second, just because there is an outward appearance
23 that someone is successful in terms of money or property does
24 not mean that earlier trauma would not subsequently lead them
25 to commit wrongful acts.

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1 To be clear, your Honor, I am not suggesting nor do I
2 mean that everyone who had Mr. Carton's experience would commit
3 crimes, but some people, your Honor, cannot overcome that level
4 of trauma, and Mr. Carton could not and did not, and that's
5 part of the reason we're here. And it's important in
6 understanding the history and background of this defendant.

7 Your Honor has experience undoubtedly with victims of
8 abuse, across the range of types of abuse, committing wrongful
9 acts and folks wondering where did that come from. The only
10 difference here is that folks watched and observed Mr. Carton's
11 gambling addiction in plain sight. Some of the letters
12 submitted to your Honor speak to this point. His crash from
13 four decades of trying to numb the pain from abuse was
14 inevitable and is part of the context here. He had never
15 developed an appropriate or constructive outlet for that pain.
16 And not that he failed to try. He was taught to feel shame
17 about the childhood rape early on. We put this in our
18 submission. When he tried to tell his family, they silenced
19 him. Deeply embedded shame, unfortunately medicated by the
20 silence and calming effect of gambling.

21 Second, as the government points out, the psychologist
22 reports we submitted, and in particular Dr. Potenza's report,
23 link the abuse to Mr. Carton's gambling disorder. We agree
24 with that. But what the government is missing, for whatever
25 reason, is that the gambling disorder is at the heart of the

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1 crimes here.

2 Now, your Honor, we're not trying to whitewash the
3 criminal conduct here, but we're saying that there are reasons,
4 various reasons, why crimes are committed, as your Honor well
5 knows. In fact, at page 5 to 6 of the government's submission
6 the government replicates Government's Exhibits 2311 admitted
7 in evidence at the trial. In sum and substance the entire
8 chart makes the point Mr. Carton either sent money to a casino
9 or he sent money to a gambling investor, which in turn enabled
10 him to borrow more money to gamble. The chart itself is
11 evidence of the gambling addiction. The money is not being
12 spent on sports cars or new homes; it's being spent on
13 gambling.

14 In making this point, as I mentioned to the government
15 yesterday, I'm not trying to overlook the \$30,000 Mr. Carton
16 misappropriated and diverted to his landscaper, but the
17 millions and millions of dollars that were diverted to gambling
18 are what I submit tell the story. The millions from investor
19 victims in this case to gamble; the raiding of his children's
20 college fund to gamble tells the story. The depletion of his
21 and his wife's personal bank accounts and the bounced checks
22 while he earned \$2 million at the FAN so that he could gamble
23 tell the story.

24 Again, the gambling addiction is not an excuse; it is
25 a factor and a factor we submit warranting mitigation. This is

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1 what the government rationally conceded in Caspersen. There it
2 was simply that the government did not want Judge Rakoff to in
3 sum and substance give Caspersa a free pass. And we're not
4 looking for a free pass here. We're requesting that the
5 gambling addiction be given its appropriate weight, because it
6 reflects a diminished self-control which in turn bears on
7 Mr. Carton's culpability for sentencing purposes.

8 The nature and circumstances of the offense, your
9 Honor, are incredibly serious, and the facts of the fraud are
10 disturbing, but we submit that consistent with 3553(a)(1) they
11 must be balanced with the understanding of this history, of
12 this defendant, the characteristics of this defendant.

13 Despite the addiction, despite the traumas, also
14 important to understanding Craig Carton is to understand his
15 contribution to his community. Now, every white collar
16 defendant presents their argument about charity. Your Honor
17 has said this many, many times and has pointed out in many,
18 many cases that such presentations are often unavailable. But
19 if I may, your Honor, I'd like to explain why the good works to
20 society are availing here.

21 Unlike defendants who have used proceeds from the
22 illegal activity, unlike people who are convicted of tax fraud
23 and they've used society's money to be charitable, Mr. Carton
24 used his time and his physical energy and relationships to
25 improve the lives of others, especially children and children

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1 suffering with Tourette Syndrome.

2 One could imagine that Mr. Carton, who himself battles
3 Tourette Syndrome every minute of every day, including as he
4 sits here, could have focused on himself and his children who
5 suffer from Tourette's. He did not do that.

6 Your Honor has read the letters, the letters from the
7 families with children who have benefited from what Mr. Carton
8 has done in the Tourette Syndrome community. Your Honor has
9 seen the video from Camp Carton. And understand the impact
10 Mr. Carton has had when he launched his foundation in 2013.

11 What has come out of that effort, among other things,
12 is the tic guard that's described in our submission, a
13 ground-breaking dental appliance that alleviates the severity
14 of tics, showing an average tic reduction of 39 percent.

15 Camp for 9 to 13 year olds. And let's talk about
16 camp. Camp, your Honor? Having experienced what Craig Carton
17 experienced at camp at a similar age? I could not imagine the
18 strength, the emotional wherewithal it must have taken for him
19 to return even conceptually to camp, to step outside of
20 himself, to create a safe place for these children, something
21 he decidedly did not have as an 11 year old himself. Camp was
22 not a safe place for Craig Carton.

23 Your Honor has in our submission the other
24 demonstrations of community service, the story of Michael
25 Nichols, the story of Air Force Sergeant Lem and his family,

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1 the history and characteristics of the defendant, your Honor.

2 Of all the letters, your Honor, that we submitted I
3 would like to emphasize just one: The letter from Jerry Geffen
4 at Exhibit 1 in the defense submission. Mr. Geffen is Craig
5 Carton's father-in-law. Now, your Honor, as a father myself I
6 want nothing more than to look forward to the day when my child
7 goes off on his own and starts a family; how proud and excited
8 I will be. I imagine that Mr. Geffen felt the same way when
9 his child, his daughter, married Craig Carton and that union
10 gave Mr. Geffen and his wife four grandchildren. But then
11 something happened. Craig Carton broke the law and thereby put
12 his daughter in harm's way at least financially speaking.
13 Nevertheless, what Mr. Geffen writes to your Honor in a
14 two-page letter, culminating in the penultimate paragraph, he
15 writes, "I believe Craig is an extremely good person and in
16 fact a great role model except for his gambling addiction that
17 threatens to destroy him and his family."

18 He goes on to write to your Honor, "I cannot even
19 imagine the negative impact that my family and especially my
20 daughter and grandchildren would suffer if Craig is away from
21 them. I am hoping that you will show leniency and allow Craig
22 to rehabilitate from his profound addiction. In spite of the
23 events of the last few years, my wife and I are still solidly
24 in Craig's corner."

25 Now, I know that the collateral damage to families is

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1 not really taken into account in sentencing, but I offer these
2 statements to you from Mr. Geffen, your Honor, more so as to
3 inform the Court from the people who know all of him, all parts
4 of who he is, the character of the defendant. Craig Carton has
5 deeply touched a lot of lives in positive ways.

6 With respect to prong number six of the statute, your
7 Honor, the need to avoid unwarranted sentencing disparities, I
8 understand that this concept is meant to really consider and
9 compare similar conduct in sentences across the country, but I
10 submit that comparison of sentences of other coconspirators in
11 this conspiracy is also an important consideration.

12 You have our argument in our submission, your Honor,
13 so I won't spend a lot of time on this, but to underscore the
14 point, Craig Carton is no Joseph Meli. A hundred victims?
15 Restitution in excess of \$58 million? Sentenced to 78 months?

16 Here in this case, in Mr. Carton's case, the
17 government proposes that the guidelines range of 70 to 87
18 months is appropriate. That makes no sense by looking at the
19 sentences adjudicated in the broader conspiracy. The
20 government's submission doesn't even attempt to reconcile
21 sentencing Craig Carton to somewhere within the approximate
22 sentence of Joseph Meli; no attempt at explaining why that
23 would be substantively reasonable.

24 Your Honor, I began this morning by saying that at
25 least for me sentencing hearings are very sobering and serious.

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1 I cannot imagine the level of responsibility that they must
2 impose upon you. I ask that when you consider what is
3 sufficient but not greater than necessary, I respectfully
4 request that you also consider a couple of things about
5 deterrence.

6 In terms of general deterrence, some period of
7 incarceration will send a signal to those who would consider
8 stealing to refrain. A public person will be held accountable
9 just as someone who is not a person of means.

10 Those folks who sent you letters explaining that
11 Mr. Carton be incarcerated will observe that there was
12 meaningful punishment. I respectfully submit that a lengthy
13 period of incarceration in this case is not necessary to send
14 that message.

15 Certainly, those persons who suffer from addiction and
16 those persons who are victims of sexual abuse and are
17 struggling to overcome those traumas will not necessarily
18 understand the message that a long period of incarceration will
19 bring. For these people like Mr. Carton who are crying out for
20 help for rehabilitation, to somehow help them arrest their
21 mental disease, what ails them, lengthy jail terms as a signal
22 will not leave a general deterrent effect when we are talking
23 about them, people like Mr. Carton.

24 On specific deterrence, your Honor, Craig Carton is a
25 broken person; a lengthy term of incarceration will not address

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1 his illnesses. In fact, your Honor, I would argue that without
2 sufficient help, he will get worse and a long time in prison
3 will not either serve his rehabilitative needs or specific
4 deterrence.

5 It is for these reasons, your Honor, that we
6 respectfully submit and request that in this case a
7 nonguidelines sentence be imposed.

8 Your Honor, thank you for your consideration.

9 THE COURT: Thank you so much, Mr. Janey.

10 Mr. Quigley, does the government have anything in
11 response?

12 MR. QUIGLEY: No, your Honor. Thank you.

13 THE COURT: Mr. Carton, is there anything you want to
14 say to me before I sentence you?

15 THE DEFENDANT: Yes, your Honor. Is it OK to go
16 there?

17 THE COURT: Sure.

18 THE DEFENDANT: Your Honor, I appreciate you giving me
19 a few moments to address the Court and those who have come here
20 to court today to support me at this most difficult time.

21 When I came in I noticed that there are people here
22 from Gamblers Anonymous; there are former and hopefully future
23 coworkers here; there are people from the Tourette's community
24 here; and of course my family is here, as they have been
25 throughout the trial.

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1 I think it's important to mention that everybody that
2 is here in support of me and my family is here knowing full
3 well that I have made mistakes. They know that I'm not
4 innocent, and yet they're here because the part of me that
5 threw good judgment out the door is dwarfed for them by
6 something much greater than that. They stand by me today
7 because their individual experiences with me are a great
8 departure from the reason I stand here before you today. They
9 have had ample time to run away from me, but they know my true
10 character, and they know that I've made mistakes, taken
11 ownership of those mistakes, and they have decided that my
12 character and morals exhibited over a lifetime outweigh the
13 idiotic decisions I have made over the course of four months,
14 all while in the throes of a much discussed addiction.

15 I would like to start by apologizing to you'll of
16 them. They expected better of me, and they deserved better
17 from me. I failed them in the worst most public way by not
18 living up to my word and the ideals that I convinced them that
19 I stood for. The mere fact that they're still here in my
20 corner means the world to me, and I can only hope that while I
21 certainly and clearly have their support and their friendship,
22 I hope that one day soon I will re-earn their respect as well.

23 I have spoken quietly with my kids over the last 19
24 months, and I made it clear to them that their father made
25 mistakes and that when you make mistakes there are consequences

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1 for it. I love my children more deeply than any other love
2 I've ever experienced, and the mere thought of the emotional
3 pain I've caused them causes me great distress and keeps me up
4 at night.

5 I apologize to my wife of 19 years, who literally
6 overnight had her entire world turned upside down and suddenly
7 had to deal with the looks and the whispers and the street-side
8 gossip of fellow New Yorkers solely because her husband did
9 something stupid and something wrong, when all she ever wanted
10 to do was be an amazing mom and remain private, and I robbed
11 her of that. She begged me to stop gambling. She begged me to
12 smell the roses, as she put it, and to enjoy my successes. In
13 those moments I doubt that either of us fully appreciated the
14 magnitude of the addiction that had taken ahold of me. Because
15 of that addiction, there is no doubt that she is the person I
16 hurt the most. It says a great deal about her character and
17 love for me that she is still sitting in this courtroom
18 supporting me today, and to her I publicly say I love you, I
19 thank you, and I'm sorry.

20 The proceedings, especially of late, have created a
21 lightning bolt of awareness for me. Trying to reconcile my
22 professional accomplishments with my personal failures, I have
23 spent many nights seemingly howling at the moon what I actually
24 did versus the perception or popular belief of what my actions
25 were.

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1 Have I been successful? Yes, I have. But nobody has
2 any idea what it's like when the lights go out and you lay in
3 bed awake with your thoughts and the demons come. And those
4 demons are very real. Some people are fortunate enough to seek
5 professional help. I didn't. Others turn to drugs or alcohol
6 to numb the pain. Some sadly take their own lives. I turned
7 to gambling.

8 Your Honor, my name is Craig C. and I'm a compulsive
9 gambler. The date of my last bet and loss was June 22, 2018.
10 I have a disease, an addiction, and, sadly, like so many people
11 before me -- and thousands more to come after me -- I fell prey
12 to that disease. I have learned through rehab and Gamblers
13 Anonymous that I'm truly powerless over this disease.

14 I say this not to justify what I did, because there is
15 no justification at all for it, but maybe to explain how
16 someone in the position that I was in, with all the trappings
17 of success, could make such wildly stupid decisions. It was
18 inconceivable to me that over the course of such a limited
19 period of time the events that I caused to happen will forever
20 impact so many lives so negatively.

21 I thought I figured out a way to handle things, but
22 then I was put in a position of having to discuss the
23 particulars of the Jerry Sandusky case at Penn State on my
24 radio show, and as I did, it triggered all the emotions I tried
25 so desperately hard to control and sweep under the rug; all

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1 those terrible emotions came rushing back to me. If anyone
2 remembers those shows -- and they're on YouTube still -- you
3 will see and hear me in the most passionate and angry verbal
4 dialog I have ever presented on the radio. I was reliving my
5 horror day in and day out and yet still too ashamed to let
6 people know about my personal experiences, too ashamed to put
7 those experiences in my book, too ashamed to talk to my wife
8 about it, too ashamed to ask for help; and I sought refuge in
9 quiet, and the more I could isolate myself from the world, the
10 better I felt.

11 I turned to blackjack for that salvation, never
12 thinking that I would one day have a problem or that it wasn't
13 a healthy choice or a healthy way to cope. It simply made the
14 demons go away, and that's all I really cared about, so I did
15 it more and more and more. And if and when I didn't have
16 enough liquid funds of my own to wager, I sought out others who
17 did and who were willing to provide me with loans -- as your
18 Honor now knows -- so I could simply escape and feel better.

19 Winning and losing became irrelevant to me. I didn't
20 celebrate winning \$4 million in three days at Resorts World in
21 the Bahamas. I didn't bemoan losing \$700,000 in less than 24
22 hours a few weeks later in Atlantic City. I just wanted and
23 needed to play to feel the cocoon that playing provided me that
24 nothing else could.

25 Sadly, gambling became my escape, my anesthesia, my

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1 unhealthy coping mechanism. To those who have difficulty
2 drawing a straight line between my gambling disease and my
3 abuse, all I can say is that they should thank God that they've
4 never had to experience that connection firsthand.

5 There are two men who loaned me money that I have not
6 fully repaid: Ron DelGaudio and Gerry LoDuca. I have reached
7 out to both of them personally over the last 19 months to
8 apologize, to apologize for being cavalier with their hard
9 earned money, and to pledge without reservation to make them
10 whole financially if not emotionally. I have begun that
11 process, and as you now know, made payments to both men. I
12 know those payments don't all of a sudden make things right,
13 but I hope it shows both men and your Honor that I'm dedicated
14 to what I pledged to them; and if they were both physically
15 here today, I would again apologize face to face, man to man.

16 I know the law doesn't see shades; it sees things in
17 black and white. Fortunately, the justice system has judges
18 like yourself to provide temperance where appropriate. So I
19 beg that your Honor sees the shades, sees that fraud itself was
20 not my business as it was for so many others who have stood
21 where I stand today. I never intended to take money from
22 others and not pay them back. I had grandiose and very real
23 business plans for how we would all make money together. Under
24 the law I understand there is no difference, but to me and for
25 the very people who are here today supporting me, I believe

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1 it's an important difference.

2 In a weird way being arrested, while devastating and
3 life changing, may have actually saved my life. It forced me
4 to get help, to see therapists, to talk to someone. It has now
5 19 months later allowed me to openly discuss being a victim of
6 sexual assault, discuss being an addict, having the disease of
7 compulsive gambling, and taking ownership of what I did wrong
8 and why I am here. It has essentially forced me to stop
9 gambling, to become a better person, and I thank God for that.

10 The hardest part of me continuing to get better and
11 coming to terms with what I've lived through as a child, and
12 how I chose to handle the emotions of it, is that I risked and
13 lost other people's hard earned money while not being
14 forthright with them. The remorse I have for that is tangible,
15 and as I once read, remorse is the single worst punishment to
16 endure, to want to undo something that you have done.

17 I allowed myself to become compromised, to set aside
18 the street smarts I was raised with as a latch key kid in the
19 1970s, and to make irrational decisions, decisions like getting
20 into business with the men I did, decisions like adding
21 sentences to e-mails, decisions to allow people of questionable
22 character to invest in my gambling and be involved with my
23 private life and business opportunities, decisions that I knew
24 were wrong but I did anyway, because they all gave me the
25 opportunity to gamble more.

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1 I abandoned the dreams I had entertained. I had
2 wanted life not to bother me too much, and I temporarily
3 succeeded, and how pitiful that was for me to do.

4 Every defendant is unique to his or her own
5 circumstance. I will offer to your Honor that every defendant
6 then needs to be considered uniquely. Putting me in prison
7 accomplishes nothing. It won't deter a single person who has
8 the addiction of gambling to not desperately search for another
9 way to fund his or her next bet. It doesn't make society a
10 safer place. It makes me disappear for a prescribed period of
11 time and of course to make my family suffer even more than what
12 I've already put them through.

13 I have a unique skill, I suppose, of public
14 communication, a skill that affords me the opportunity to be
15 heard by millions of people, a skill that would be wasted
16 behind prison bars in contrast to all the good I could do by
17 speaking to the assault, the subsequent disease, the addiction
18 and the perils of falling prey to it, as I have.

19 I'm desperate to continue my rehabilitation with the
20 government-endorsed and funded therapist I see on a regular
21 basis, and Gamblers Anonymous meetings, which I regularly
22 attend and have recently been asked to lead.

23 I have come a long way in these last 19 months, and I
24 am demonstrably a different person, a better person than the
25 one who first stood before you back in September of 2017. I

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1 beg of you to use your authority as chief judge to impose a
2 sentence that might seem counterintuitive to some but will have
3 the longest, most positive impact on my victims and in our
4 community.

5 If you think -- as I hope you do -- that even now I
6 could be a greater asset to my community as I once was -- and
7 of course to my family -- by not going to prison, and using my
8 voice for good, for awareness, for recovery, and for full
9 restitution, then I would kindly beg of you the proverbial
10 second chance.

11 I have already begun to make a difference to those
12 who, like me, suffer from a gambling addiction, and I will
13 continue to do so long after these court proceedings are done.

14 I humbly submit to you, your Honor, again that not
15 every defendant is the same, not every defendant has to go to
16 prison for the appropriate punishment to be meted out or for
17 society to be protected.

18 There are times when really good people do really
19 stupid things. I lied to Brigade Capital about when I needed
20 their money, because I wanted, I needed to escape from the
21 demons, and acquiring their money five weeks before I really
22 needed it allowed me to gamble right now and later use my
23 credit card to buy those tickets.

24 I really beg of you that you see the good in me and
25 how it outweighs the bad, and that you are willing to take the

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1 calculated chance that I am who I claim to be, and that I will
2 continue to do the things I've already begun to do. And should
3 you show me that mercy, you will never look back and regret it.

4 My family is keenly aware of the fact that I may
5 possibly be absent from some of the landmark moments in my
6 children's lives. My daughter Mickey J. graduates high school
7 this May and goes to college in August. My oldest son, the
8 brave face of Tourette's through our foundation graduates from
9 high school next year and will be going off to college. My
10 second oldest son Lucky enters high school in the fall and will
11 look to make his varsity football team. And my little man
12 Anthony, possibly playing organized sports for the first time,
13 singing with the school choir, and most likely entering third
14 grade at a different school in a different school in a
15 different town. All this as a result of my actions, their
16 father's actions, specific actions that I take full ownership
17 of.

18 I know it's your duty to impose a sentence sufficient
19 but not greater than necessary, and I can only hope that you
20 agree that when you do take all the factors of my case, my
21 behavior, my rehabilitative efforts, and the other things I've
22 done since my arrest, plus my life as a whole, and my potential
23 professional future, that you not only consider but effectively
24 use one of the many creative sentences that rests within your
25 discretion.

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1 I want to thank you again for allowing me to speak in
2 your courtroom. And for the 90 or so people that wrote letters
3 on my behalf -- I never wanted to ask people's help to write a
4 letter vouching for me; and I put myself in the position of
5 doing that -- I apologize to those people. And I thank you
6 again for the time. That's all I have.

7 UNIDENTIFIED SPEAKER: Excuse me. I apologize. Let
8 me speak before sentencing. Please, I beg you.

9 THE COURT: Good afternoon, Mr. Carton.

10 THE DEFENDANT: Good afternoon, your Honor.

11 THE COURT: Colleen from New York, first time, long
12 time.

13 I have never forgotten the look of shock that crossed
14 your face when I revealed that I was a listener; you clearly
15 weren't expecting it. But I am a long-time listener, generally
16 8:30 to 9:15 while I'm driving in. In fact, I was listening
17 the morning you called in sick to work. I listened as it all
18 unfolded in real time.

19 The fact that I listened to the show regularly means
20 that before the clerk wheeled this case out to me at random I
21 knew a lot about you. I knew you were extremely knowledgeable
22 about your craft, about the business of sports and
23 communication. I knew you could be fun to listen to. I also
24 knew you could be a jerk. Just FYI, there are women who like
25 to watch and listen to sports and talk about sports, and things

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1 can get a little raunchy on sports radio, and there were times
2 when I had to change the channel because it was a little too
3 locker room talky, but for the most part it was a good show, an
4 insightful show, and I enjoyed it -- I still do.

5 I knew that you reveled in celebrity in the sports
6 world; that came across even over the radio. You loved being
7 famous, and you loved hanging with the famous, and having and
8 providing others with access to the famous. And I don't fault
9 you for that. I think most of us would feel exactly the same
10 way if we had an entree into that glittering world.

11 I knew that you had Tourette's and that you had kids
12 with Tourette's, and that you had started a foundation to help
13 kids with Tourette's, and you ran a camp for kids with
14 Tourette's, and that you threw yourself into that work for your
15 kids and for those kids.

16 I have to tell you the first thought that I had when
17 the case got wheeled out to me was, oh, my God, I hope he
18 didn't loot the foundation; I hope he didn't touch the money in
19 the foundation. Because I've had a lot of cases like yours,
20 different defendants, similar facts, and I know when you're
21 desperate to find money to pay somebody off, nothing is off
22 limits. And I can't tell you how relieved I was when I found
23 out that that was not an element in this case.

24 I knew about all the other charities that you
25 supported, all the celebrity baseball and hockey and basketball

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1 games in which you played, all the air time that you gave to
2 athletes so that they could talk up their charitable causes,
3 all the events that you attended and that you promoted, events
4 that raised money or literally hundreds, probably thousands of
5 worthy enterprises over the ten years that you were heard on
6 WFAN. I knew, in other words, that you had put your celebrity
7 to good use and that a lot of people benefited from that; and I
8 liked you for that.

9 When I read the indictment in this case, and your
10 public statements about it, at the beginning I knew immediately
11 something else. If I hadn't known it before, I would know it
12 today because you just said it; it just came out of your mouth.
13 I knew that if the allegations against you were true -- as they
14 proved to be -- you probably thought you weren't doing anything
15 criminal even though you obtained money from other people by
16 deceit. That's your word, the word you used in the letter that
17 you sent me, you took money by deceit. And you think that
18 because you were always sure that you would find a way to pay
19 it back, so no one would be hurt and no one would be the wiser.
20 You were sure that you could make it all work out. I knew that
21 because I have handled a lot of cases like yours, and everyone
22 who does what you did thinks and hopes that it will all work
23 out in the end. You steal money, and you lie in order to get
24 your hands on it, but you do it with the best of intentions.

25 Unfortunately, as you have learned, under the law good

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1 intentions don't excuse lies and deceit and theft, crimes that
2 were facilitated by the very things I've identified about you:
3 That you were a celebrity, that you had ties to other famous
4 people, that you could provide people with a connection to the
5 otherwise unattainable world of big time sports, and that you
6 had an admittedly deserved reputation for good works, which
7 made folks who probably should have known better more trusting
8 than they otherwise might have been.

9 And I've also learned from presiding over cases like
10 yours that when you do the kinds of stuff that you and Meli and
11 Wright were doing, the money always runs out at some point, and
12 only then do you realize that the road to your personal hell
13 was paved -- truly paved with your good intentions.

14 Craig Carton, you have indeed descended into a hell of
15 your own making. Everything you spent a lifetime of building
16 up is gone. Your marriage is over. Your family is decimated.
17 Your kids are terrified. Your career is in tatters. Your
18 reputation is lost. You're expose as a fraudster, a criminal,
19 a felon. You've lost everything worth having: Career,
20 respect, emotional and financial security for your family. And
21 a lot of people who have grudges against you, whether they're
22 justified or not, are now coming out of the woodwork to take
23 their potshots. It's pretty horrible, and you did it to
24 yourself.

25 I see that your new video is called "The Reckoning".

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1 There will be many reckonings to come out of your behavior --
2 reckonings with family, friends, employers and creditors.

3 Today comes the legal reckoning. Taking all relevant
4 factors into account, the United States Sentencing Commission
5 advises that I should send you to jail for between 70 and 87
6 months, six or seven years. The government says you deserve
7 every day of that and urges me to impose a guidelines sentence.
8 Mr. Gottlieb and Mr. Janey presented volumes of evidence and
9 argument for why you should serve far less.

10 Now, it's understandable that the presentation that
11 the defense has made on your behalf -- including the long
12 letter that Mr. Gottlieb wrote to me and the amazing speech
13 that Mr. Janey just delivered, and even the letter that you
14 wrote me -- it's understandable that they should be heavy on
15 the factors that you argue entitle you to a break.

16 The government's not wrong when it says they're a
17 little light on the factors that brought you here today. The
18 government's letter brief by contrast focuses on those facts,
19 and they are ugly facts. The government's recounting in its
20 sentencing memorandum of what you did accords with the evidence
21 that the jury and that I found to be convincing, found in fact
22 to be overwhelming. So, I accept and I adopt as my findings
23 the government's recital of the facts of this case, which can
24 be found in its sentencing memo and in the probation report,
25 because that recital accurately and unapologetically explains

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1 what you did to turn yourself from a highly respected media
2 star and philanthropist into a criminal.

3 Now, what people don't understand often about these
4 sentencing guidelines is that what triggers a particular
5 person's guidelines is the amount of the loss that was caused
6 before your crime was detected, which for our purposes we're
7 going to set at the day that you called in sick for work, and
8 that amount is, I don't know, something like \$5.1 or \$5.2
9 million.

10 MR. QUIGLEY: Yes, your Honor.

11 THE COURT: And some of that money has subsequently
12 been repaid; a little more has been repaid in recent weeks.
13 And that's a good thing, and part of your sentence will be to
14 repay the rest of it. And you know that. But the loss amount
15 also drives the calculation of what your prison sentence should
16 be, and like many of my colleagues I believe that the
17 guidelines as we call them, because they're driven by loss
18 amount are sometimes unduly harsh, especially when there is
19 some double counting going on, as there is in your case, some
20 double counting, two double extra counting points for the same
21 loss.

22 Now, I don't imagine that your victims would feel that
23 the guideline sentence was on the harsh side, and I've gotten a
24 few letters from people who have nothing to do with the case
25 who wouldn't feel that way, but I know enough about prison to

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1 know that 70 to 87 months is a very, very long time. So I'm
2 not unreceptive to the argument made by Mr. Gottlieb and Mr.
3 Janey who ask that I vary your sentence from the guideline
4 level. That said, I'm receptive only to a few aspects of the
5 argument.

6 Your lawyers offer several arguments in mitigation.
7 They cite your position as the head of a large family, one that
8 includes children who suffer from an illness. They call my
9 attention to all the good works that you've done in the past
10 and to the good work that you hope to do in the future -- a
11 different kind of good work, trying to convince people that
12 gambling can be a bad thing, a thing that in your case was
13 destructively addictive. I happen to have had The Post called
14 to my attention this morning, so I read Phil Mushnick's column,
15 and I see that you've already made a video, which I look
16 forward to seeing, exposing the downside of gambling, and the
17 lawyers ask that I especially consider your gambling addiction
18 in mitigation of your crimes.

19 Where your family is concerned, I want you to know --
20 and this is true in every case -- I feel terrible for your wife
21 and for your children and for your parents. They're going to
22 suffer because of what you -- the person who loved them the
23 most and who was responsible for them and their comfort and
24 their safety -- chose to do. But when you crossed a line
25 between gambling, or asking people for loans to help you

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1 gamble, and altering e-mails and redirecting money that was
2 solicited from business investments to your personal bank
3 account, and the things that you did that were criminal, you
4 know, you should have thought of them. Everybody's family is
5 collateral damage, and I don't consider your family
6 responsibilities to be a mitigating factor. What I consider
7 them to be is a tragedy.

8 Now, I have no doubt that this entire escapade
9 resulted from an addiction to gambling that was deep and
10 powerful, but I'm not going to mitigate your sentence because
11 of your gambling addiction. I certainly can't do a downward
12 departure, because the guidelines themselves are clear. I mean
13 I could, but I'm not going to. Addiction is not to be used as
14 a grounds for departing downwardly from the guidelines, but I
15 happen to agree with the government that I shouldn't impose a
16 variance sentence for that reason either, and that's because
17 gambling may be why you did what you did, but a gambling
18 addiction is not an excuse for stealing from people or for
19 defrauding people.

20 You may have felt under extraordinary pressure to
21 repay your gambling debts and your other business debts, but in
22 our society one is not free to relieve that pressure by picking
23 someone else's pockets. One can declare bankruptcy. One can
24 do other things that you might have found to be publicly
25 humiliating, but one does not need to steal other people's

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1 money.

2 Everyone has a motive for committing a crime. There
3 is always a reason. And as my colleague Judge Kaplan noted
4 many years ago -- and I've had occasion to quote him from time
5 to time -- many of those motives arise out of behaviors that
6 society recognizes as compulsive or addictive. I number in the
7 thousands the drug addicts who have passed through this court
8 convicted of dealing in drugs which they did to support their
9 own habit, their own addiction, or convicted of stealing money
10 to pay for a habit to support an addiction, and many of those
11 crimes arise out of a defendant's sense of desperation. Dozens
12 upon dozens of rudderless young inner city men join gangs
13 because they provide the identity, the structure, the
14 companionship, even the family that those people lack. There
15 is always a reason, and it's often a compulsive or an addictive
16 or a desperate reason.

17 The fact that your motive was to scratch an itch to
18 make bets -- whatever the source of that itch -- generates no
19 more sympathy in me than does the fact of somebody else's
20 motive was to scratch an itch to own a Ferrari.

21 Using someone else's money for your purposes without
22 that person's permission is in my book a reprehensible thing to
23 do, and doing it in the manner that you did -- repeatedly lying
24 to induce people to part with their money, stringing folks
25 along, giving them false accountings of what they thought were

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1 investments -- you did all that. And if it sounds a little bit
2 like what a guy named Madoff did, it's because it is the same
3 thing. He just did it for a lot longer and apparently was a
4 lot better at it.

5 I am distressed to learn about what happened to you as
6 a child. I'm not a psychologist, or a psychiatrist, or a
7 clinician, and I suppose it is entirely possible that that was
8 something that you had buried and that it resurrected itself
9 from Sandusky or something else, and that it started you down
10 the road to perdition.

11 But the government is not wrong. Mr. Janey is
12 horrified by what the government said on page 18 of its brief,
13 but I was not horrified by what the government said on page 18
14 of its brief. You have done an amazing -- amazing job of
15 building a life for yourself, a successful life for yourself, a
16 successful family life for yourself, a successful career for
17 yourself in the 40 years since that happened, and while those
18 actions may have -- I'll even accept that they did --
19 contribute to your compulsive gambling, no psychologist has
20 opined that they drove you to commit fraud. It explains a lot
21 but it doesn't excuse anything.

22 OK. That said, I don't think it's necessary to
23 sentence you to 70 months in a federal penitentiary in order to
24 give you a sentence that is sufficient but not greater than
25 necessary to effectuate the goals of the sentencing statute.

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1 I'm not going to keep you in suspense. I'm going to follow the
2 recommendation of the probation department. I'm going to
3 sentence you to 42 months in prison; together with a maximum
4 term of three years' supervised release; with special
5 conditions of participation in Gamblers Anonymous, mental
6 health counseling and extensive community service.

7 So, why do I think that an incarcerative sentence is
8 necessary here? Well, as Mr. Janey reminded me, I've said on
9 more than one occasion that I do sentencing the old fashioned
10 way. In the end, punishment is the principal purpose of
11 sentencing. I think that punishment is a perfectly legitimate
12 goal of sentencing in a society that is held together by a
13 mutual compact to abide by the law. You broke the compact, so
14 you have to take a time-out from society. And because you
15 broke the compact in a serious way, that time-out needs to
16 reflect the seriousness of what you did.

17 If you had gone into a bank and robbed it of several
18 million dollars, not only would no one blink if you got
19 sentenced to four years, but everyone would expect that you
20 would get sentenced to four years or even more. Well, you did
21 the same thing. Taking money from the people you took it from
22 is just as serious in my estimation as going to a Citibank
23 branch and taking it out of the vault.

24 Another role of sentencing is to set an example for
25 other people who might be tempted to do what you did. In your

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1 case the very fact that you are famous means that people will
2 hear about this; they will hear that you are being sent to a
3 federal correctional facility because of what you did, and not
4 just for a few months or for a year but for three and a half, a
5 real long time-out. And maybe -- just maybe -- if they're
6 tempted to do something similar, to rob Peter to pay Paul, they
7 will think twice about it. Maybe they will decide that the
8 risks aren't worth it. That's the message that it's important
9 to send. It's a message that promotes respect for the law and
10 to help the community understand that everyone -- no matter his
11 background, or his family circumstances, or his success in
12 life -- has to pay when he or she commits a crime.

13 Yet another goal of sentencing is to deter further
14 criminal conduct. Now, there are plenty of studies suggesting
15 that imprisonment is not needed as a deterrent by people like
16 you, people who are not violent, people from whom society does
17 not need to be protected, people for whom shame and
18 mortification -- which are emotions that I know you feel --
19 imposes a punishment that never ends. Maybe so.

20 But I know that if I had a gambling problem, a
21 compulsion, and I had to spend 42 months in jail because I
22 stole a lot of money to support that habit -- not because I
23 gambled but because I stole a lot of money to support that
24 habit -- it would make a tremendous impression on me. It might
25 even convince me that the game was not worth the candle. You

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1 are a recovering addict, and you need to understand and have it
2 reinforced that the game is not worth the candle.

3 So, why am I not going to sentence you to a full
4 guideline sentence as the government requests? Several
5 reasons:

6 One is that my probation department assessed you and
7 decided that 70 months was excessive, and I have tremendous
8 respect for those professionals and their assessments. They
9 see it all, and they are in an excellent position to guide me.

10 One is an argument that Mr. Janey made about
11 proportionality. Mr. Janey and I see alike about
12 proportionality. We know that the proportionality issue is
13 supposed to compare people across the entire nation whose
14 numbers are the same, but we also know, Mr. Janey and I, that
15 proportionality where it really counts is relative culpability
16 within a single offense. And I would not sentence you to the
17 amount of time that Mr. Meli got, and I need to sentence you to
18 more time than Mr. Wright got.

19 The third reason is that you made great strides toward
20 rehabilitation, and I believe those to be sincere.

21 And the fourth is that you've done a lot of good in
22 this world, far more than most people have, and that weighs
23 heavily on your side of the ledger.

24 Now, I recognize that you had a very special platform
25 for doing good, one that's not available to all of us, but you

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1 took advantage of that platform to help an awful lot of people
2 in an awful lot of ways, and I am going to give you credit for
3 that.

4 Furthermore, I happen to think that you can do
5 considerable good in the future, especially if you keep your
6 promise that you're going to work to make the public aware of
7 the real dangers of addictive gambling.

8 I want to thank the people from GA who are here today
9 and who wrote on Mr. Carton's behalf. I won't name you; I will
10 keep you anonymous. But they believe that your repentance is
11 sincere, and I think they're probably the best judges of that.

12 It is admirable that you're working with enterprises
13 like the National Council on Gambling to try to parlay your
14 celebrity into a forum that will let people know that gambling
15 can ruin your life. I gather that the video that I read about
16 this morning is a first step toward that, and I applaud you for
17 that, and in fact I'm going to help, because not only am I
18 shortening your sentence so that you will get out and back into
19 the world sooner, but I'm going to require that you perform 150
20 hours of community service as one of the conditions of your
21 supervised release. That's because I think you can do a lot
22 more good by going around our communities and speaking out
23 against the very real dangers of gambling than you can by
24 sitting around for the extra year or two in prison. It is
25 because I, a long-time listener, know what you're capable of,

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1 and we're going to get you back out where you can find yourself
2 a pulpit from which to shout out a warning -- not that silly
3 you got a problem, call 1-800 gambler warning -- which you
4 yourself told me in your letter was woefully inadequate -- your
5 words -- but a real warning about gambling as the road to
6 perdition, which it is for some people, and which it certainly
7 has been for you.

8 Now, whether that pulpit will be on sports radio is up
9 to the folks who run sports radio. I don't run sports radio.
10 I do have a letter from one of the station managers, he says he
11 talked to you about how your eventual return could be used to
12 alert people to the dangers of compulsive gambling, and maybe
13 some day I will turn on WFAN and there you will be again.

14 But I haven't stopped listening to sports radio, and I
15 know that it has a big new advertiser, and that is legalized
16 gambling. Two, three, four ads for sports betting run in every
17 half hour segment, ads that tout the wonders of placing the
18 bet, betting on the games, doubling your bet during the games,
19 changing your bet at half time, getting free credit against
20 your next bet if you lose -- I haven't figured out how that one
21 works yet -- and it troubles me, because the message in those
22 ads is antithetical to the message you deliver in your new
23 video and the message you're going to have to deliver as part
24 of your community service.

25 On the radio these sports betting ads are read by the

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1 talent, they're read by people like you. In his column this
2 morning Mr. Mushnick noted with some irony that Boomer Esiason
3 read an ad for sports betting on the air within minutes of
4 announcing that you had been arrested.

5 If none of this had happened -- if none of this had
6 happened and you were still on the air -- you would probably be
7 reading those very ads with their -- to quote you -- woefully
8 inadequate warning at the end. Will sports radio give you a
9 platform to undercut its biggest new source of advertising
10 income? It's not for me to decide. I think there might be
11 some magical thinking going on here.

12 If sports radio is no longer your platform, you're
13 going to have to find a new platform from which to deliver your
14 new message. But I happen to think that you're capable of
15 doing that.

16 I have reviewed the presentence report. I adopt as my
17 findings its description of the offense and the offense
18 conduct, its calculation of the guidelines.

19 I believe the total offense level is 27; is that
20 correct? Mr. Carton's Criminal History Category is I. Yes,
21 27, Criminal History Category I. I accept and adopt the
22 description of the defendant's personal characteristics set
23 forth beginning at paragraph 91 of the presentence report. I
24 have considered at great length every one of the Section 3553
25 factors. I have concluded that a sentence of incarceration is

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1 required but that a guidelines sentence would exceed the level
2 that is sufficient but not greater than necessary to effectuate
3 the goals of the sentencing statute, as I have highlighted
4 those goals that I believe are most relevant in Mr. Carton's
5 case.

6 Mr. Carton, would you please stand. Docket number 17
7 Crim 680, a total offense level of 27, a Criminal History
8 Category of I, I hereby sentence you, Craig Carton, to be
9 remanded to the custody of the Attorney General of the United
10 States and the Bureau of Prisons for a term of 42 months on
11 each of Counts One, Two and Three; those terms to run
12 concurrently, to be followed by a term of three years'
13 supervised release on each count, again to run concurrently.

14 Mr. Carton's financial obligations will be such that I
15 am not recommending a fine. You will be required to make
16 restitution. The amount at present I think needs to be reduced
17 by \$50,000; is that correct?

18 MR. QUIGLEY: The 50,000 is reflected.

19 THE COURT: It's reflected in the amount here?

20 MR. QUIGLEY: Yes, your Honor.

21 THE COURT: OK. Restitution to your victims in the
22 amount of \$4,827,093.21. And I will enter a forfeiture
23 preliminary judgment in a moment. You are required to pay
24 \$300. That's \$100 per count in court costs. That is due and
25 payable immediately.

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1 Mr. Janey?

2 MR. JANEY: Your Honor, if we may discuss timing.

3 THE COURT: Timing? You can certainly discuss timing,
4 but let's discuss recommendation or place.

5 MR. JANEY: Right. If we could have until Monday to
6 submit to the Court a place.

7 THE COURT: Certainly.

8 MR. JANEY: There are a couple of things we want to
9 consider in terms of distance to the family.

10 THE COURT: Right. And I'm eager to accommodate
11 family visitation.

12 MR. JANEY: Thank you. And whatever place we will
13 request be recommended, your Honor, it will be a place with an
14 RDAP program.

15 THE COURT: Right. So, when you get out, Mr. Carton,
16 you have 72 hours to show up in this building and to report to
17 the probation office on the sixth floor. Then for three years
18 you will report to a probation officer on a regular basis; you
19 will do everything the probation officer tells you to do; and
20 you will do nothing that the probation officer says you cannot
21 do.

22 The big mandatory conditions are easy to figure out.
23 You can't commit another crime. You cannot unlawfully possess
24 a controlled substance. You have to refrain from the unlawful
25 use of controlled substances, submitting to one drug test

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1 within 15 days after your release and at least two periodic
2 drug tests thereafter. The dates will be picked at random by
3 your probation officer. You have to cooperate in the
4 collection of DNA, genetic identifying material, as directed by
5 your probation officer. You have to comply with the standard
6 conditions of supervision. They are in writing, you are going
7 to get a copy, and you will see them and you will sign off on
8 them.

9 You have to be truthful with your probation officer.
10 You have to allow the probation officer to visit you at your
11 home or elsewhere any time, and if there happens to be
12 contraband lying around, the probation officer can pick it up
13 and take it.

14 You have to work at least 30 hours a week at a lawful
15 type of employment, unless the probation officer excuses you
16 from doing so. And if you plan to change where you work or
17 anything about your work, such as your position or your job
18 responsibilities, you have to notify the probation officer at
19 least ten days before you make the change. If notifying the
20 probation officer in advance isn't possible because they close
21 the place down, you show up at work and the doors are locked,
22 call your probation officer within 72 hours.

23 You can't communicate or interact with anybody who you
24 know is engaged in criminal activity. And if you know somebody
25 who has been convicted of a felony, you must not knowingly

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1 communicate or interact with that person without first getting
2 the permission of your probation officer.

3 If you are arrested or questioned by law enforcement,
4 you have to notify the probation officer within 72 hours.

5 You must not own, possess or have access to a firearm,
6 ammunition, destructive device or dangerous weapon.

7 There are some special conditions in addition to the
8 standard. You have to participate in an outpatient mental
9 health treatment program approved by the United States
10 Probation Office, and you have to continue to take any
11 prescribed medications unless your healthcare provider tells
12 you otherwise. You must contribute to the cost of services
13 rendered based on your ability to pay and the availability of
14 third-party payment. And I authorize the release of relevant
15 evaluations and reports to the healthcare provider.

16 You have to perform 150 hours of community service.
17 And you will work it out with the probation officer, but you
18 should not be licking envelopes somewhere. You should be out
19 there talking about what you know is the most important thing
20 you can talk about, which is the dangers of gambling and how it
21 can ruin your life.

22 You have to provide the probation officer with access
23 to any financial information that he or she asks for, and you
24 can't incur any new credit charges or open additional lines of
25 credit without the approval of your probation officer unless

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1 you're in compliance with the installment payment schedule
2 which is applicable to your restitution.

3 It is my recommendation that you be supervised in your
4 district of residence.

5 The restitution in this case, total amount
6 \$4,827,093.21. \$3,507,093.21 to the hedge fund, that's
7 Brigade. \$870,000 to investor number one, and \$450,000 to
8 investor number two, the gentlemen you referred to earlier.

9 Your liability for restitution is joint and several
10 with your codefendants. All payments should include your name
11 and docket number to ensure that they are attributed to you.

12 If while you're incarcerated you are engaged in a
13 non-UNICOR work program, they will take \$25 a quarter out
14 towards your restitution penalties. If you're in a UNICOR
15 grade 1 through 4 program, they will take 50 percent of your
16 gross monthly earnings. And when you get out restitution is to
17 be paid in monthly installments of 15 percent of your gross
18 monthly income, commencing 30 days after the date of your
19 release.

20 You need to notify the United States attorney for this
21 District within 30 days of any change in your mailing or
22 residence address that occurs while any portion of the
23 restitution remains unpaid.

24 Additionally, I have been given by the government a
25 preliminary order of forfeiture and money judgment, and I

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1 believe that the parties have signed this.

2 MR. QUIGLEY: It was in the consent order, but I don't
3 think there is any dispute.

4 THE COURT: All right, fine.

5 On application of the government, and on the findings
6 set forth in this preliminary order of forfeiture and money
7 judgment, it is hereby ordered, adjudged and decreed that as a
8 result of the offenses charged in Counts One through Three in
9 the indictment, of which the defendant was found guilty, a
10 money judgment in the amount of \$4,599,000 in United States
11 currency, which represents the amount of proceeds traceable to
12 the commission of the offenses charged in those counts, shall
13 be entered against the defendant Craig Carton.

14 Pursuant to Rule 32.2(b)(4) of the Federal Rules of
15 Criminal Procedure, upon entry this preliminary order of
16 forfeiture and money judgment is final as to Mr. Carton and
17 shall be deemed part of his sentence and included in the
18 judgment of conviction. All payments on the outstanding money
19 judgment shall be made by postal money order, bank or certified
20 check, made payable in this instance to the United States
21 Marshals Service and delivered by mail to the United States
22 Attorney's Office, Southern District of New York, attention
23 Money Laundering and Asset Forfeiture Unit.

24 The marshals are authorized to deposit payments into
25 the asset forfeiture funds, and the United States shall have

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1 clear title to such forfeited property. Now that's in addition
2 to, not in lieu of the restitution.

3 I am signing the order of forfeiture on this 5th day
4 of April at 1:25 p.m., and I am signing the order of
5 restitution same time and date.

6 Craig Carton, you have a right to take an appeal from
7 the judgment of conviction that has been entered against you
8 and on the sentence that has been imposed upon you. You have a
9 right to counsel in connection with any appeal you choose to
10 file, and if you cannot afford a lawyer, one will be appointed
11 to represent you. Do you understand, sir?

12 THE DEFENDANT: I do.

13 THE COURT: You may be seated.

14 Mr. O'Neil, aside from the paperwork, do you have
15 anything else? You wanted to talk about surrender date.

16 MR. JANEY: Yes, your Honor. Thank you. We would
17 request a date after June 5, your Honor. And if I may explain
18 why.

19 THE COURT: It's OK. July 15?

20 MR. JANEY: Thank you, your Honor.

21 THE COURT: Couldn't get you in by June 5 anyway. So
22 you will be at your daughter's graduation.

23 Is there anything else from the government?

24 MR. QUIGLEY: No, your Honor. Thank you.

25 THE COURT: Thank you, Mr. Quigley and Mr. Kobre.

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1 Is there anything else from the defense?

2 MR. JANEY: No, your Honor. We will follow up with
3 the submission on Monday as to requests for designation
4 recommendation.

5 THE COURT: Thank you. Thank you, Mr. Janey. And
6 please thank Mr. Gottlieb for me.

7 MR. JANEY: Thank you, your Honor.

8 THE COURT: Anything else from you, Mr. O'Neil?

9 These proceedings are closed.

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